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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/758,648  | 01/10/2001  | Larry Lunetta        | 004565.P001         | 9518             |
| 21186   | 7590        | 04/20/2005           | EXAMINER            |                  |
| SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.<br>P.O. BOX 2938<br>MINNEAPOLIS, MN 55402 |             |                      | PATEL, KANJIBHAI B  |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2625                |                  |
| DATE MAILED: 04/20/2005   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/758,648

Applicant(s)

LUNETTA ET AL.

Examiner

Kanji Patel

Art Unit

2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 16-25, 32-38, 42-46, 50-52, 55-59, 62 and 63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 21, 34, 42, 50 and 57 is/are rejected.
- 7) ☒ Claim(s) 2-5, 16-20, 22-25, 32-33, 35-38, 43-46, 51-52, 55-56, 58-59, 62-63 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/7/05, 5/4/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

1. Applicant's amendment filed on 12/2/04 has been entered and made of record.

By this amendment, claims 6-15, 26-31, 39-41, 47-49, 53-54, 60-61 and 64-69 are canceled.

Claims 1-5, 16-25, 32-38, 42-46, 50-52, 55-59 and 62-63 are pending in the application.

***Response to Arguments***

2. Applicant's arguments, see pages 4-5 of the remarks, filed 12/2/04, with respect to the rejection(s) of claim(s) 1-5, 16-25, 32-38, 42-46, 50-52, 55-59 and 62-63 under 102 rejection have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the communication concerning related applications (11/004,312; 11/004,733 and 11/004,734) submitted on 3/3/05

***Information Disclosure Statement***

3. The supplemental information disclosure statement (IDS) submitted on 3/7/05 was filed after the mailing date of the non-final Office Action on 7/29/04. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the supplemental information disclosure statement is being considered by the examiner.

Also the IDS filed on May 04, 2004, have been considered by the examiner and a signed copy of Form 1449 is attached with this Office Action.

***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1, 21, 34, 42, 50 and 57** are provisionally rejected under the judicially created doctrine of double patenting over claims 1-2 and 6-12 of copending Application No. 11/004,312.

**Claims 1, 21, 34, 42, 50 and 57** are provisionally rejected under the judicially created doctrine of double patenting over claims 1, 5 and 9-12 of copending Application No. 11/004,733.

**Claims 1, 34 and 42** are provisionally rejected under the judicially created doctrine of double patenting over claims 1-3 of copending Application No. 11/004,734.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending applications and would be covered by any patent granted on that copending applications since the referenced copending applications and the instant application are claiming common subject matter, as follows:

Specifically, claim 1 of each of the copending applications substantially identically includes each of the limitations of the instant claim 1. Similarly, copending applications claims 2, 6-12 (11/004,312), 1, 5 and 9-12 (11/004,733), 1-3 (11/004,734) set forth substantially identically each of the limitations of instant claims, 21, 34, 42, 50 and 57; 1, 34 and 42; 1, 21, 34, 42, 50 and 57, respectively. While the copending application claim includes additional limitations or features, the instant claim includes the transitional term "including" which fails to preclude the possibility of additional elements. Therefore, the instant claims are not patentably distinct from the claims of the copending applications.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Allowable Subject Matter***

**5. Claims 2-5, 16-20, 22-25, 32-33, 35-38, 43-46, 51-52, 55-56, 58-59 and 62-63** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Contact Information**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kanji Patel whose telephone number is (571) 272-7454. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta, can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kanji Patel  
Art Unit 2625  
4/15/05

  
KANJIBHAI PATEL  
PRIMARY EXAMINER